

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JEFFERY BEARD,

Petitioner(s),

vs.

WARDEN, LEBANON CORRECTIONAL
INSTITUTION,

Respondent(s).

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Case Number: 1:07cv932

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Hogan. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on September 4, 2008 a Report and Recommendation (Doc. 9). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 10).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Accordingly, respondent's motion to dismiss (Doc. 7) is **GRANTED**, and petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DISMISSED** with prejudice on the ground that it is time-barred under 28 U.S.C. § 2244(d).

A certificate of appealability will not issue with respect to an order adopting the Report and Recommendation to dismiss the petition with prejudice on procedural statute of limitations

grounds, because under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000), “jurists of reason” would not “find it debatable whether this Court is correct in its procedural ruling.”

Because this Court finds that the first prong of the *Slack* standard has not been met in this case, it need not address the second prong of *Slack* as to whether or not “jurists of reason” would find it debatable whether petitioner has stated a viable constitutional claim in either of his grounds for relief. *See Slack*, 529 U.S. at 484. However, it is noted that even assuming, *arguendo*, petitioner’s claims for relief are not time-barred, it appears that under the circumstances of this case, petitioner has not alleged a viable constitutional claim.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting the Report and Recommendation will not be taken in “good faith” and, therefore **DENIES** petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. *See Fed. R. App. P. 24(a); Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

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s/Susan J. Dlott
Susan J. Dlott
United States District Judge